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U.S. DISTRICT COURT
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DISTRICT OF UTAH
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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, NORTHERN DIVISION

UNITED STATES OF AMERICA,	:	
	:	Case No.2:04 CR 770 DAK
Plaintiff,	:	
	:	MOTION FOR SECOND
vs.	:	PROTECTIVE ORDER
	:	PERMITTING DISCLOSURE OF
ROBERT WAYNE FISCUS,	:	CHILD PORNOGRAPHY TO
	:	DEFENSE ATTORNEY
Defendant.	:	
	:	Honorable Dale A. Kimball

The United States of America, by and through the undersigned Assistant United States Attorney, hereby moves this Court to enter an order permitting the United States to disclose as discovery material copies of images from computer diskettes and DVD's which contain or may contain illegal child pornography to the defendant's expert witness, **Mr. Jerry Ropelato**. In addition, the United States asks the Court to include the various state and federal agencies involved in the investigation, recovery, and storage of said illegal child pornography in the disclosure order in the event any of the material remains

in their possession.

In support of this motion, the United States represents to the Court that in the course of investigating the above-named defendant for violations of Title 18, United States Code, Sections 2251 and 2252, certain material was recovered from the defendant which has been identified as child pornography. The possession, manufacture, and/or dissemination of such material is illegal, as is indicated in the charges set out in the Indictment.

The defendant has requested discovery in the above-styled case, including the review of the alleged images charged in the Indictment. Defendant's attorney has requested copies of the graphic image files of child pornography which the United States has charged in the Indictment and has determined will be presented at trial for purposes of expert review. The defendant's expert wishes to review those items which the United States intends to use to prove its case. The United States is reluctant to disseminate copies of those items without a court order, since to do so would be to commit an offense similar to those charged in the Indictment.

Therefore, the United States requests that the Court enter an order directing the United States to provide copies of the designated computer graphic image files to the defense expert in this case, in order to comply with the provisions of Fed. R. Crim. P. Rule 16.


In addition, the United States requests that the Court order the defendant's expert

to retain the material in their offices only. Further, the United States asks the Court to direct defendant's attorney to not make any copies of the images to give to the defendant or any one else. Further, the United States asks that the Court direct the defendant's attorney to seek a court order if he intend to make any copies of any of the alleged child pornography to give to potential expert witnesses for review prior to testimony. The United States asks that if the defendant's attorney does intend to use expert testimony he provide his expert witnesses report to the United States by **July 30, 2005**.

Finally, the United States asks the Court to direct the defendant's attorney to return to the United States all copies of all material made available in discovery upon conclusion of the proceedings in the above-styled case.

RESPECTFULLY SUBMITTED this 22nd day of June, 2005.

PAUL M. WARNER
United States Attorney


KARIN M. FOJTIK
Assistant United States Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the United States Attorney's Office for the District of Utah, and that a copy of the foregoing MOTION FOR SECOND PROTECTIVE ORDER PERMITTING DISCLOSURE OF CHILD PORNOGRAPHY TO DEFENSE ATTORNEY, Proposed PROTECTIVE ORDER, and AGREEMENT CONCERNING INFORMATION COVERED BY PROTECTIVE ORDER were sent via facsimile and mailed, postage prepaid, this 23rd day of June 2005, to:

Gary Weight
Aldrich, Nelson, Weight & Esplin
43 East 200 North
P.O. Box L
Provo, Utah 84603-0200
Fax No. (801) 373-4964

Valerie Maxwell